

### **REMARKS/ARGUMENTS**

The Applicant submits this amendment in connection with the above-identified application in response to the Final Office Action mailed January 13, 2004. Claims 41-45, 47-58, and 63-70 are currently pending in the present application. In the Final Office Action, claims 67, 68, 70, and 72 stand rejected. In addition, claims 54-62, 69, and 71 stand objected to. The Applicant notes with appreciation that the Examiner has allowed claims 41-45, 47-53, and 63-66.

In the Final Office Action, the Examiner objected claims 41, 54, and 67-71 as containing various informalities. In a response, the Applicant has amended claims 41, 54, 67, and 71 to correct the informalities. As such, the Applicant respectfully submits that claims 41, 54, and 67-71 are in condition for allowance and immediate allowance of the application is respectfully requested.

Claims 67 and 68 of the present application stand rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,401,269, issued to Buttner-Janz et. al. (hereinafter "Buttner-Janz"). For a reference to anticipate a claim under 35 U.S.C. § 102, the reference must teach every element of the claimed invention. (See MPEP § 2131).

Claim 67 of the present application is directed to an implantable device and includes at least one intervertebral device, a first anchor plate attached to a vertebrae and configured to have the intervertebral device detachably secured thereto, the first anchor plate having a first plate member, a second anchor plate attached to a vertebrae and configured to have the intervertebral device detachably secured thereto, the second anchor plate having a second plate member, and one or more anchor elements positioned on the first and second anchor plates. Buttner-Janz directed to an intervertebral disc endoprosthesis that includes two prosthesis plates which are to be inserted between two vertebrae, and a prosthesis core with cooperates with at least one prosthesis plate at an articular surface permitting a rotational movement around a vertical axis, wherein the articular surface has a median section and a frontal section,

and forms in each section a curved arch having a radius of curvature that differs in one of the sections relative to the other section. As shown in the figures of the Buttner-Janz reference, the prosthesis core is positioned between the articular surface formed on the prosthesis plates thereby permitting the prosthesis core to engage the articular surface of the prosthesis plates. In contrast, claim 67 of the present application discloses an intervertebral device detachably secured to the first and second anchor plates attached to adjacent vertebrae. During use, the first and second anchor plates may be affixed to a first and second vertebra. Thereafter, an intervertebral device may be detachably secured to the implanted first and second anchor plates. As such, the Applicant respectfully submits that the Buttner-Janz reference fails to teach an intervertebral device which may be detachably secured to the first and second anchor plate. Therefore, the Applicant submits that Buttner-Janz fails to teach or suggest every element as recited in claims 67 of the present application. For at least the same reasons, the Applicant respectfully submits that claim 68, which depends on claim 67, is similarly patentable over Buttner-Janz.

Claim 72 of the present application stands rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,026,373, issued to Ray et. al. (hereinafter "Ray"). Claim 72 of the present application is directed to a method of implanting an intervertebral device that includes accessing an implantation site, attaching a first anchor plate to an end plate of a vertebrae, attaching a second anchor plate to an adjacent vertebrae, and detachably securing an intervertebral device to the implanted first and second anchor plates. In contrast, the Ray reference is directed to a surgical method and apparatus for fusing adjacent bone structures and recites the steps of spreading apart adjacent vertebral bony structures and forming between the bony structures a lateral bore which extends into the disc space between adjacent vertebral bone structures with a female thread that penetrates into cancellous regions of the bony structures, selecting an appropriately sized hollow cylindrical fusion cage which has an external, substantially continuous helical thread which defines a plurality of turns with a valley between adjacent turns and as **properated** in the valley between adjacent turns and can mate with the female thread, screwing the cage into the threaded bore

and attaching the cage with bone-inducing substance. As such, the Ray reference fails to disclose detachably securing a first and second anchor plate to adjacent vertebra and attaching an intervertebral device to the implanted first and second anchor plates. Rather, the Ray reference discloses a screw thread 15 machined on an internal surface of the fusion cage to threadably receive an end cap 16. (Column 7, lines 25-27). The end cap of the Ray device is threadably attached to the fusion cage to maintain material within the fusion cage. As such, the Applicant respectfully submits that Ray fails to teach or suggest an intervertebral device detachably secured to a first and second anchor plate and, therefore, fails to teach or suggest every element as recited in claim 72 of the present application as required by MPEP § 2131.

Claim 70 of the present application stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Buttner-Janz in view of United States Patent No. 5,071,473, issued to Steffee. (Hereinafter "Steffee"). To establish a prima facie case of obviousness, three basic criteria must be met by the Examiner. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the teaching of the references. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references when combined must teach or suggest all the claim limitations. (See MPEP § 2143.03).

The Applicant respectfully submits that the rejection to claim 70 under 35 U.S.C. § 103(a) must fail for at least the same reasons as set forth in the traversal of claims 67 and 68 above. In short, the Applicant respectfully submits that the Buttner-Janz and Steffee devices fail to include an intervertebral device detachably secured to a first and second anchor plate. Rather, Buttner-Janz recites an intervertebral disc endoprosthesis that includes two prosthesis plates which are to be inserted between two vertebrae, and a prosthesis core which cooperates with at least one prosthesis plate at an articular surface permitting a rotational movement around a vertical axis. As stated above, the prosthesis core of the Buttner-Janz device is positioned between the prosthesis plates, but not detachably secured thereto.

In contrast, the Steffee device includes a first and second anchor plate having an elastomeric core adhered thereto. As such, the elastomeric core of the Steffee device is intended to remain non-detachably secured to the first and second anchor plates. Therefore, the Applicant respectfully submits that neither the Buttner-Janz reference nor the Steffee reference, either alone or in combination, teach or suggest all the claim limitations of claim 70 of the present application. Moreover, the Applicant respectfully submits that Buttner-Janz and Steffee teach away from the device claimed in claim 70 of the present application insofar as both the Buttner-Janz and Steffee devices include non-detachable intervertebral bodies.

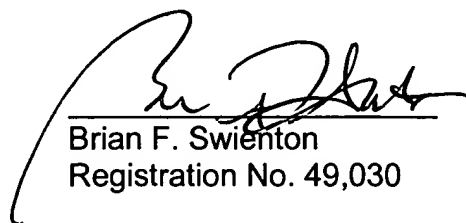
In view of the foregoing, the Applicant believes the pending claims to be in condition for allowance. The consideration and allowance of the present application is respectfully and sincerely solicited.

If it is felt for any reason that direct communication with the Applicant's attorney would best serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned attorney at the below-list telephone number.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account number 50-1329.

Respectfully submitted,

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Brian F. Swienton  
Registration No. 49,030

STRADLING YOCCA CARLSON & RAUTH  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660  
Telephone: (949) 725-4000  
Facsimile: (949) 725-4100

*Customer Number: 31,278*